

Internal Revenue Service

memorandum

CC:WR:PNW:SEA:TL-N-7764-96

CLCampbell

Date: MAR 16 1999

To: Internal Revenue Service
Attn: [REDACTED]
[REDACTED]

From: District Counsel
Seattle M/S W670

Subject: [REDACTED], Tax Matters Partner

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You are soliciting Consents to Extend the Statute of Limitations (Forms 872) from [REDACTED] and [REDACTED]. Because the partnerships consisted of fewer than 10 partners one of which was a corporation, the audit of both partnerships for years [REDACTED] through [REDACTED] is governed by the TEFRA procedures set forth in I.R.C. § 6229 et seq.¹

During the course of the TEFRA audit, the Service determined that the general partners or both [REDACTED] and [REDACTED] were defunct

¹ For partnership tax years ending after August 5, 1997, the TEFRA procedures do not apply to a partnership with 10 or fewer partners each of whom is a natural person, a C corporation or the estate of a deceased partner. I.R.C. § 6231(a)(1)(B)(i).

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corporations. There were no other general partners for either partnership and the partnership failed to designate a new tax matters partner. Since there were no other general partners, it was impracticable to apply the largest-profits-interest rule of Treasury Regulation section 301.6231(a)(7)-1(m). Treas. Reg. § 301.6231(a)(7)-1(n). Thus, according to the revenue agent, the Service, under the procedures specified in Treasury Regulation section 301.6231(a)(7)-1(q), designated [REDACTED], a limited partner, as the tax matters.² Pursuant to section 301.6231(a)(7)-1(p) the Service allegedly notified the partners and the partnership of the selection of [REDACTED] as the tax matters partner.³

[REDACTED] was the tax matters partner for both [REDACTED] and [REDACTED]⁴ until a series of mergers on [REDACTED] terminated the existence of [REDACTED]. [REDACTED] was merged into [REDACTED] another for-profit [REDACTED] corporation. [REDACTED] merged into [REDACTED], a [REDACTED] stock corporation. [REDACTED] merged into a [REDACTED] nonstock, nonprofit corporation, [REDACTED] merged into [REDACTED] non-profit corporation.

To answer the question who is currently the tax matter partner for [REDACTED] and [REDACTED] it is necessary to look to state law to analyze the effect of the mergers.⁵ Under the laws of the states of [REDACTED] and [REDACTED], following a merger, the surviving corporation succeeds to all the rights, privileges, immunities and powers of each merging corporation. See [REDACTED] & [REDACTED]. When [REDACTED] merged into [REDACTED] under [REDACTED] law, [REDACTED] survived and all powers, etc. of the merged corporation vested in the surviving corporation, [REDACTED]. When [REDACTED] merged into [REDACTED], a [REDACTED] corporation, the same result obtained. Because, in [REDACTED], nonstock,

² Since no general partner could be selected, pursuant to the regulations the partnership could not designate the limited partner as tax matters partner. Treas. Reg. § 301.6231(a)(7)-1(q)(3).

³ [REDACTED] a limited partner, had held itself out as authorized to act on behalf of the partnerships after the general partners had become defunct.

⁴ Since we do not have copies of the correspondence relating to the designation of [REDACTED] as the tax matters partner for [REDACTED] and [REDACTED], we are relying on the representations of exam summarized in the preceding paragraph that [REDACTED] has been properly designated the tax matters partner for [REDACTED] and [REDACTED].

⁵ For example, in *Bugaboo Timber Co. v. Commissioner*, 101 T.C. 474 (1993) the Tax Court analyzed whether the consents in the TEFRA audit were executed by persons authorized under state law where no TMP was designated.

nonprofit corporations and for-profit stock corporations cannot merge, the [REDACTED] had to conduct its reorganization by effecting the merger of the stock entity, [REDACTED] into the nonprofit [REDACTED] in the State of [REDACTED] where the law permits such mergers. [REDACTED] survived the merger of [REDACTED] into [REDACTED] under [REDACTED] law. Then pursuant to [REDACTED] [REDACTED] survived the merger of [REDACTED] into [REDACTED]

Under state law, [REDACTED] is the surviving corporation which succeeded to all powers of [REDACTED]. Therefore, [REDACTED] is the TMP. We recommend that you notify [REDACTED] as successor to the now defunct [REDACTED] that the Service has concluded that, following the merger of [REDACTED] into [REDACTED], the merger of [REDACTED] into [REDACTED] the merger of [REDACTED] into [REDACTED] and the merger of [REDACTED] into [REDACTED] [REDACTED] became the tax matter partner for both [REDACTED] and [REDACTED]. Thus, the Service has determined that [REDACTED] as the surviving corporation following the mergers of [REDACTED] has the power to sign the extension of the statute of limitations on assessment of tax against the partnership. If [REDACTED] believes that another person or entity is now the tax matters partner for [REDACTED] and [REDACTED], the evidence of the authority of that person or entity as tax matters partner should be provided to the Service at the time the Forms 872 are executed.

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CATHERINE L. CAMPBELL
Attorney

cc: Cheryl Matsumoto
Ernie Iwata
Janet Hughes
Terry Franklin
Kate McKenna
Pat Golembiewski
Paul Accettura